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which have largely displaced the older view. *Wainwright v. P. H. & F. M. Roots Co.*, 97 N. E. 8 (Ind.). Thus, by the growing weight of authority transactions of corporations, in which transactions any,¹¹ or even a majority,¹² of its directors are adversely interested, whether as contracting parties or as directors of the other contracting party,¹³ cannot be avoided by the corporation if no unfairness was practiced upon it by the directors adversely interested.

ASSENT OF BUYER TO PASSING OF TITLE ON DELIVERY TO CARRIER. — Delivery of goods to the carrier under a contract to sell ordinarily passes title to the buyer,¹ but if the shipment is not strictly in accordance with the contract, it is said that the buyer must assent.² In the absence of any contract, title could not pass until the time that the buyer accepted the offer, and assented to receive title;³ and it is often said that the waiver of minor provisions, as the acceptance of a new modified contract, has a similar effect.⁴ But it seems probable that such a waiver vests the title in the buyer from the time of the shipment.⁵ A waiver is not an acceptance. It is strictly the relinquishment under certain conditions of a legal right or defense.⁶ But the courts seem to feel that one party to a contract should not suffer from the non-performance of minor conditions inserted solely for his own benefit, and thus in effect give him the power to treat the contract as if it had never contained such a condition. It follows that his assent relates back to the time of shipment. The doctrine is analogous to ratification,⁷ and it would seem that it could not operate to defeat the rights of purchasers from the vendor during the interval.⁸ There seems no reason in justice to prevent its ousting a trustee in bankruptcy, or even attaching creditors.⁹

A recent case suggests a third possibility. *Lovell v. Newman*, not yet reported (C. C. A., Fifth Circ.). The buyer had been induced by fraudulent bills of lading to pay for cotton before it was shipped, and did not assent to the late shipment until after the bankruptcy of the seller. The court said that the assent of a creditor is presumed in the absence of subsequent dissent. It can only mean that the title passed by operation of law

¹¹ *Beach v. McKinnon*, 148 Fed. 734; *Vonnoh v. Sixty-Seventh St. Atelier Building*, 55 N. Y. Misc. 222, 105 N. Y. Supp. 155.

¹² *Wyman v. Bowman*, *supra*; *Tatem v. Eglanol Mining Co.*, *supra*.

¹³ *Leavenworth v. Chicago, etc. Ry. Co.*, 134 U. S. 688, 10 Sup. Ct. 708.

¹ *Fragano v. Long*, 4 B. & C. 219.

² See *Porter Mfg. Co. v. Edwards*, 29 Hun (N. Y.) 509; *Woodruff v. Noyes*, 15 Conn. 335.

³ *The Frances*, 8 Cranch (U. S.) 359; *Felthouse v. Bindley*, 11 C. B. N. S. 869.

⁴ See *Hanauer v. Bartels*, 2 Colo. 514, 521.

⁵ *Richardson v. Dunn*, 2 Q. B. 218; *Orcutt v. Nelson*, 1 Gray (Mass.) 536; *Peters v. Elliott*, 78 Ill. 321. See *Finn v. Clark*, 12 All. (Mass.) 522, 525.

⁶ See *San Bernardino Investment Co. v. Merrill*, 108 Cal. 490, 494, 41 Pac. 487, 488.

⁷ See *Reid v. Field*, 83 Va. 26, 33, 1 S. E. 395, 399. It is not ratification because only by a fiction can the shipper be said to act as agent, and because the concurrence of assent and not the relation of agency is necessary to pass title.

⁸ *Cf. Bird v. Brown*, 4 Exch. 786.

⁹ *Peters v. Elliott*, *supra*.

without the buyer's actual assent; and that by his dissent he has the power to divest that title *ab initio*. Rescission for fraud or breach of warranty has this effect only from the time of its occurrence.¹⁰ But there is an analogy in the case of gifts delivered to a third person, or to a trustee, where the assent of the donee or *cestui que trust* has always been "presumed."¹¹ An early English case first extended the doctrine to creditors,¹² and; in spite of subsequent disapproval by English judges,¹³ it was followed in New York.¹⁴ The same result was reached independently from the same analogy by the Supreme Court of the United States in 1850.¹⁵ In a similar line of cases the principle does not seem to have been considered,¹⁶ and the infrequency of its application makes its validity doubtful. There is a radical difference between a donee and a creditor, for, whereas the former gives up nothing and the possibility of his dissenting may safely be disregarded, a creditor must surrender his debt. At the moment of shipment there is about as little reason to presume assent by a creditor as by an ordinary contractor. The result would be practically the same if the relation back of assent is allowed to oust the rights of attaching creditors, and in both cases the reasons for the result are those above referred to. As an original question, presumption of assent might be more convenient; but it is now impossible to establish it in the case of ordinary contractors, and there seems no valid line of distinction.

THE RIGHT OF HUSBAND TO SUE WIFE FOR ALIMONY. — Not only are virtually all the definitions of alimony that appear in the books limited in their terms to an allowance proceeding from the husband to the wife,¹ but it has frequently been expressly decided that the law does not recognize a right in the husband to alimony.² The property which equity in granting a divorce allows a husband on the ground that, although title to it is in the wife, it has been derived through the husband under circumstances which make it inequitable for the wife to retain it,³ is sometimes incorrectly referred to as alimony. On principle, however, it is

¹⁰ *Thompson v. Conover*, 32 N. J. L. 466. *Cf. Hotchkiss v. Higgins*, 52 Conn. 205.

¹¹ *Davis v. Ney*, 125 Mass. 590; *Doe v. Knight*, 5 B. & C. 671. *Cf. Goss v. Singleton*, 2 Head (Tenn.) 67, 77.

¹² *Atkin v. Barwick*, 1 Str. 165. *Cf. Smith v. Field*, 5 T. R. 402.

¹³ See *Neate v. Ball*, 2 East 117, 124; *Alderson v. Temple*, 4 Burr. 2235, 2239.

¹⁴ *Brown v. Bowe*, 35 Hun (N. Y.) 488; *Sturtevant v. Orser*, 24 N. Y. 538. *Cf. Berly v. Taylor*, 5 Hill (N. Y.) 577.

¹⁵ See *Grove v. Brien*, 8 How. (U. S.) 429, 440. *Cf. Tompkins v. Wheeler*, 16 Pet. (U. S.) 106; *Brooks v. Marbury*, 11 Wheat. (U. S.) 78.

¹⁶ *Walter v. Ross*, 2 Wash. C. C. (U. S.) 283; *Bailey v. Hudson River R. Co.*, 49 N. Y. 70; *Straus v. Wessel*, 30 Oh. St. 211. These cases, although they treat a factor under advances as a vendee, refuse to do so unless he has ordered the consignment.

¹ See *Martin v. Martin*, 65 Ia. 255, 256, 21 N. W. 595, 596; 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, § 1386; GODOLPHIN, ABR. ECCL. LAWS, 508.

² *Somers v. Somers*, 39 Kan. 132, 17 Pac. 841; *Groth v. Groth*, 69 Ill. App. 68. In some jurisdictions, by statute, a husband may obtain alimony. See R. I. GEN. LAWS, 1909, c. 247, § 8; 1 PELL'S REVIVAL OF N. C., 1908, c. 31, § 1565.

³ *Meldrum v. Meldrum*, 15 Colo. 478, 24 Pac. 1083. See note to *Greene v. Greene*, 4 L. R. A. 110.